IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 300 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
JUSAB ABDREMAN LUHAR & 1 - Opponent(s)

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Appearance :
Ms. Nandini Joshi, APP for the appellant.
MRS NISHA M PARIKH (Advocate appointed) for Opponent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 17/03/2006

ORAL JUDGMENT

1. The acquittal of the respondents of the offence punishable under Section 498A read with Section 34 of the Indian Penal Code recorded by the learned Judicial Magistrate, First Class, Nalia, vide judgment and order

dated 16-12-1992 rendered in Sessions Case no.85 of 1986 is subject matter of challenge in the present appeal, which is filed under Section 378 of the Code of Criminal Procedure.

2. The complainant-Haji Mamad Thosale who is the Sarpanch of village Dhufi informed Dhufi Police Station on 13-4-1986 at about 19.45 hrs. to the effect that the deceased Zarina had committed suicide by pouring kerosene and setting herself ablaze on that day at about 17.00 hrs. The prosecution case is that the deceased Zarina Jusab Luhar aged 21 years had entered into a wedlock with respondent no.1 five months prior to the date of incident and both of them were residing together alongwith other family members at the matrimonial home. According to the prosecution, the respondents nos.1 and 2 i.e. the husband and mother-in-law used to cause physical and mental harassment and torture to the deceased Zarina as a result of which on the day of incident i.e. on 13-4-1986 at 17.00 hrs., she was compelled to commit suicide by pouring kerosene and setting herself ablaze as the harassment and torture turned out to be unbearable. After the incident, deceased Zarina was removed to the hospital where she was declared dead. According to the

complainant, on the basis of the information supplied by him, the FIR was recorded by Constable Shivdayal vide Exh.33 and the investigation was carried out. At the conclusion of the investigation, the respondents were chargesheeted for the offences punishable under Section 498A read with Section 34 of the Indian Penal Code. The case was committed to the Court of Judicial Magistrate, First Class, Nalia, where it was registered as Sessions Case no.85 of 86. The learned Judicial Magistrate framed charge against the respondents for the offence punishable under Section 498A read with Section 34 of the Indian Penal Code which was read over and explained to the respondents. The respondents pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution has mainly examined PW 1 Abdulla Tamachi, the father of the deceased at Exh.15, PW 2 Sarabai, the mother of the deceased at Exh.16, PW 3 Jaffar Hussain at Exh.17, PW 9 Dr.Naresh Devraj at Exh.23, PW 11 Haji Mamad Hussein, the complainant at Exh.28 as well as produced docmentary evidence such as complaint filed by Haji Mamad Hussein at Exh.33, Panchnama of scene of offence at Exh.24, Inquest Panchnama at Exh.23 and Post Mortem Report Exh.27 to prove its case against the respondents. After recording of the evidence of prosecution witnesses

was over, the learned Judge recorded the statements of the respondents under Section 313 of the Code of Criminal Procedure, 1973. In their statement the respondents denied the case of the prosecution, but did not examine any witness in support of their defence. On appreciation of evidence led by the prosecution, the learned J.M.F.C., Nalia, has acquitted the respondents vide judgment dated 16-12-1992, giving rise to the present appeal.

3. Learned A.P.P. Ms. Nandini Joshi after taking us through the entire evidence on record submitted that since the incident in question had taken place within five months of the marriage between the deceased Zarina and the respondent no.1 presumption of torture having been meted out to the deceased Zarina by the respondent no.1 can be drawn under Section 113 of the Indian Evidence Act, more so, when it is an admitted position that the deceased Zarina has committed suicide. According to her, the deposition of Abdulla Tamachi and Sarabai,the father and mother of deceased Zarina at Exhs.15 and 16 respectively inspires confidence and is reliable and trustworthy, when it is supported by the medical evidence as also the evidence of independent witness who is the Sarpanch. According to the learned

A.P.P. the grounds given by the learned Judge to discard the evidence of witnesses are contrary to the well settled principles of appreciation of evidence. She finally pleaded that the learned Judge has gravely erred in acquitting the respondents as the charge against the respondents is duly proved, and therefore, the appeal should be accepted.

4. Ms. Nisha M.Parikh (Advocate appointed) while supporting the judgment and order of acquittal passed by the learned J.M.F.C., Nalia, in toto has pleaded that no interference is called for at the hands of this Court as the learned Magistrate has recorded cogent and convincing reasons and has arrived at the just and proper conclusion in acquitting the respondents of the charges levelled against them.

5. Heard the learned Counsel for the parties and taken into consideration the evidence on record. At the outset, mention requires to be made that the complainant in his evidence has clearly stated that at the time of incident, the respondent no.1 had gone to Haji Peer Mela, and therefore,the presence of the respondent no.1 at the scene of offence is doubtful.PW 1 Abdulla, father of the

deceased in his testimony has not stated a word with regard to any mental or physical torture and harassment having been meted out to his daughter deceased Zarina by the respondents or in-laws. Similarly , PW 2 Sarabai-the mother of the deceased in her testimony at Exh.16 though had made a statement that deceased Zarina when she visited her house (parental home) told her that husband told her that she will be strangulated. Deceased Zarina is also stated to have told her mother that her in-laws and sister-in-law also used to torture her, however, this statement does not find place in her police statement. In fact, the mother of the deceased has also admitted in her cross-examination that she had not made any such statement before the police. It is also interesting to note that the father as well as the mother of the deceased had not chosen to lodge any complaint with regard to the incident in question and the complaint has been lodged by the Sarpanch whereupon a case of accidental death was registered by the police. In the Post Mortem report also the cause of death is shown to be shock due to extensive burns. No evidence worth the name has come on record as to how and in what manner the deceased Zarina was harassed or tortured to such an extent that she had no other alternative but to commit

suicide. In absence of such evidence, it cannot be said that offence punishable under Section 498A read with Section 34 of the Indian Penal Code is proved beyond reasonable doubt. In such a case, it would not be safe to set aside the order of acquittal, more particularly, when the evidence has not inspired confidence of the learned Magistrate who had the opportunity to observe the demeanor of witnesses. I am in complete agreement with the view expressed by the learned Magistrate and I do not think it necessary either to reiterate the evidence of prosecution witnesses or to re-state the reasons for acquittal recorded by the learned Magistrate. In my view, expression of general agreement with the view taken by the learned Magistrate would be sufficient in the facts of the present case. This is so in view of the decisions rendered by the Honourable Supreme Court in the case of (i) **Girija Nanidni Devi & Ors v. Bijendra Narain Chaudhary (AIR 1967 SC 1124) and (ii) State of Karnatakka v. Hema Reddy and Anr. (AIR 1981 SC 1417).** On overall appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondents and the learned A.P.P. has failed to dislodge the reasons given by the learned Magistrate in order to convince us to take the view

contrary to the one already taken by the learned Magistrate.

6. For the foregoing reasons, we do not see any merit in the appeal. The appeal, therefore, fails and is dismissed. The Muddammal articles are ordered to be disposed of in terms of the directions given by the learned trial Court in the impugned judgment.

(M.D.Shah,J.)

mds-lee.